

# **Madras High Court**

**The Tamil Nadu Public Service ...**

**VS**

**The Tamil Nadu Information ...**

**on 30 March, 2010**

DATED : 30.03.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NOs.34630 of 2007, 6518 and 10327 of 2008,

4113, 18049 and 21109 of 2009

and

M.P.NOs.1 of 2007, 1 and 1 of 2008, 1,1 and 1 of 2009

The Tamil Nadu Public Service Commission,

rep. by its Secretary,

Omanthoorar Government Estate,

Chennai-600 002. .. Petitioner in

all the petitions

Vs.

1.The Tamil Nadu Information Commission,

rep. By its Registrar,

Kamadhenu Super Market,

First Floor,  
Old No.278, New No.373, Anna Salai,  
Teynampet,  
Chennai-600 018. .. 1st respondent in  
all the petitions

2.J.Mohanraj .. 2nd respondent in  
W.P.No.34630 of 2007

V.Anbalagan .. 2nd respondent in  
W.P.No.6518 of 2008

M.Perumal .. 2nd respondent in  
W.P.No.10327 of 2008

P.Kozhandavelu .. 2nd respondent in  
W.P.No.4113 of 2009

Dr.K.Sivasankari .. 2nd respondent in  
W.P.No.18049 of 2009

P.Mohanmuniyandi .. 2nd respondent in  
W.P.No.21109 of 2009

W.P.Nos.34630 of 2007, 6518 and 10327 of 2008, 4113, 18049 and 21109 of 2009 are preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records in respect of the impugned order issued by the first respondent dated 16.7.2007 in case Nos.3430 and 3431/Enquiry/2007, impugned order dated 9/12.11.2007 in case No.15446/Enquiry/2007, impugned order dated 9.1.2008 in case No.24260/Enquiry/2007, impugned order dated 23.12.2008 in Case

No.12713/Enquiry/2008, impugned order dated 20.5.2009 in Case No.4014/Enquiry/2009 and the impugned order dated 14.7.2009 in case No.33375/Enquiry/2008 and to quash the same as void, unlawful, unjust and unconstitutional.

For Petitioner : Mr.G.Masilamani, SC

for Mr.R.Sureshkumar and

Mr.K.Surendranath

For Respondents : Mr.G.Rajagopal, SC

for M/s.G.R.Associates for R1

in all the writ petitions

Mr.V.R.Rajasekaran for R2 in WP.10327/08

Mr.S.Kumaradevan for R2 in WP.6518/08

Mr.V.Chandrakantan for R2 in WP.21109/09

Ms.R.Meenal for R2 in WP.18049/09

Mr.R.Malaichamy for R2 in WP.4113/09.

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## COMMON ORDER

In all the six writ petitions, the petitioner is the Tamil Nadu Public Service Commission (for short TNPSC) represented by its Secretary. The challenge made in these writ petitions are the orders passed by the first respondent Tamil Nadu Information Commission represented by its Registrar.

2.The contesting second respondents had sought for certain information from the petitioner TNPSC. When the same was not forthcoming, they approached the Information Commissioner and the Commission, after notice to the TNPSC, granted directions to the TNPSC to divulge information sought for by the contesting respondents.

3.In these writ petitions, notice was ordered to the respondents. Pending notice, an interim stay was granted. The following table will show the number of writ petitions, name of information seeker/contesting respondent and whether any interim order granted and the date of the interim order: Sl.No.

W.P.No.

Name of information seeker

Interim order granted and date of interim order

1

34630 of 2007

J.Mohanraj

Interim stay, dated 06.11.2007

2

6518 of 2008

V.Anbalagan

Interim stay, dated 14.3.2008

3

10327 of 2008

M.Perumal

Interim stay, dated 24.4.2008

4

4113 of 2009

P.Kozhandavelu

Interim stay, dated 23.3.2009

5

18049 of 2009

Dr.K.Sivasankari

Interim stay, dated 10.9.2009

6

21109 of 2009

P.Mohanmuniyandi

Interim stay, dated 15.10.2009

4.The following table will show the writ petition number, date of order of the Tamil Nadu Information Commission and the nature of information directed to be divulged:

Sl.No. / W.P.No. / Date of the impugned order / Nature of information directed to be divulged

1 / 34630 of 2007 / 16.07.2007 / To provide information sought for by the petitioner.

2 / 6518 of 2008 / 12/11/07 / To provide answer keys

3 / 10327 of 2008 / 30/1/2008 / To provide copies of answer sheet and answer key

4 / 4113 of 2009 / 23.12.2008 / To provide information regarding the action taken in representations, dated 15.2.2008, 13.11.2007 and 11.12.2007.

5 / 18049 of 2009 / 4/6/09 / Answer key, master key and OMT answer sheets and marks awarded

6 / 21109 of 2009 / 14.07.2009 / Answer key, etc.

5.Mr.G.Masilamani, learned Senior Counsel leading Mr.R.Sureshkumar and Mr.K.Surendranath, counsel appearing for TNPSC contended that the orders of the Tamil Nadu Information Commission (first respondent) in all the writ petitions are illegal and contrary to the provisions of the Right to Information Act, 2005 (for short RTI Act) and that the TNPSC is a constitutionally created mechanism in terms of Article 315 of the Constitution.

6.Before going into the issues raised in these writ petitions, it is necessary to decide the status of the writ petitioner. The TNPSC like any other State Public Service Commission, is established in terms of Article 315 of the Constitution. Under Article 320(1), it shall be the duty of the State Public Service Commission to conduct examinations for appointment to the service of the State. Further, under Article 320(3), the TNPSC can also be consulted on all matters relating to the method of recruitment in civil services and for civil posts. It is also entitled to be consulted by the State Government. It is the duty of the TNPSC to advise on any matters referred to them. The members of the TNPSC enjoy certain constitutional safeguards in the matter of removal as provided under Article 317 of the Constitution. Though the Supreme Court has held in several matters that the word "shall" found under Article 320(3) is not mandatory, it is only directory. But, however it is the duty of the Public Service Commission to present annually to the Governor of the State a Report of work done by the Service commission including a memorandum of the reasons given by the State Government for not accepting its advise and the same shall be placed before the State legislature concerned. Therefore, the TNPSC is undoubtedly a "public authority" in terms of Section 2(h) of the RTI Act. Therefore, there is no question arise in the present case about the applicability of the RTI Act to the writ petitioner.

7.The learned Senior Counsel appearing for the petitioner attempted to suggest that in case of examinations conducted by the TNPSC, both oral and written, marks are available and are also published. After oral interview, a select list made by the TNPSC is also put out in the website. However, after publication of results, the key answers kept by the TNPSC as well as the answer sheets are not provided to any candidate as a matter of policy. The TNPSC is not bound to disclose the information sought for in this regard. He also referred to the manual on the RTI Act prepared by the TNPSC and stated that the Commission though has decided to share certain types of information, having regard to Section 8 of the RTI Act, it has decided that 27 items will not be available in public domain as found in the manual.

## "7. Information exempted under Section 8:-

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Having regard to the nature of the functions of the Commission there shall be no obligation to give any citizen, any information on the items listed below under Section 8 as disclosure thereof would harm the interest and competitive position of other candidates or third parties unless the competent authority, depending upon the facts of the case, is satisfied that larger public interest warrants the disclosure of such information:-

Information relating to all departmental tests and competitive examinations under direct recruitment that could not be shared.

1. Names and address of question paper Setters, Moderators, Printers of Question papers, Evaluators of answer books, Experts and Departmental Representatives who assist the interview, composition of interview boards.
2. Assessment of merit of the candidates, Written/Oral Test marks until the finalization of the final selection results.
3. Answer sheets/marks sheets of the candidates.
4. Answer sheets and marks sheets of other candidates. Selection List/Reserve List.
5. Details regarding payment mode to question paper Setters, Printers, Examiners, Experts, Departmental Representatives or any person or organization who assist the Commission in examination work.
6. Names and address of the Chief Invigilators/Invigilators of the Examination Hall.
7. Details of Scanning & Checking of OMR Answer sheets.
8. Scheme of Valuation and Model Answers.
9. Instructions to Examiners/Moderators.
10. Details of answer books evaluated by Examiners and marks awarded by them.

11. Application and enclosure of other candidates, Nominal Rolls, Memo of Admission (Hall Ticket) of other candidates, seating arrangement etc.
12. All details of out-sourcing.
13. Interview Statements & Proceedings.
14. Agenda and Minutes of Commission's meetings proceedings.
15. Office Orders and Commission's Proceedings etc..
16. Commission's correspondence with outside agencies.
17. Copy of notes in respect of appointment of personnel for doing confidential works.
18. Information which would harm the competitive position of other candidates/ their parties, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
19. Information expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.
20. Information received in confidence from any other State Public Service Commissions/ Union Public Service Commission or any other organizations/institutions or any department of the Government.
21. Information, disclosure of which would endanger the life or Physical safety of any person or identify the source of information or assistance given in confidence for conducting any investigation/inquiry.
22. Information, which would impede the process of investigation or apprehension or prosecution of offenders.
23. Matters relating to disciplinary cases of the Staff and Officers of the Tamil Nadu State and Subordinate service.
24. Personal Information which has no relation to any public activity or interest or the disclosure of which would cause un-warranted invasion of privacy of an individual unless the Public Information Officer or the Appellate Authority, as the



case may be, is satisfied that the larger public interest justifies the disclosure of such information.

25. Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign State or lead to incitement of an offence.

26. Information, the disclosure of which would cause a breach of privilege of parliament or the State Legislature.

27. Provided that those matters which come under the exemptions specified in Section 8(1) of the Act shall not be disclosed.”

8. Therefore, when they received certain applications from the contesting respondents, they had duly informed them about their inability to provide such information. On such rejection, even the appellate authority appointed under the Act has also negated such information. Thereafter, when TNPSC was issued notice by the Information Commission, in response sent to the Information Commission, the TNPSC, by letter, dated 28.9.2007 to one Perumal, stated as follows:

“I am directed to invite attention to the references cited and to say that as the process of conduct of examination is indeed a confidential activity undertaken by various examination bodies and disclosure of answer sheets would not save any public interest and therefore disclosure is based u/s 8(1)(d) of the Act, and thus decision is upheld by the Central Information Commission, New Delhi. Under the same analogy, the Tamil Nadu Public Service Commission is not in a position to disclose the answer sheets. Hence the request of the Information Seeker in this regard, cannot be complied with.

2. Also, I am to say further that as regards providing of answer keys to the test booklets, the Information Seeker is informed that the issue pertains to the core activities of the Commission similar to that of the UPSC. In a similar case, the UPSC had filed a LPA in the Hon'ble High Court of Delhi on this and related issues against the decision by the Central Information Commission in the matter and the operation of the decision by the CIC, had been stayed by the Hon'ble High Court. Therefore, a decision in the matter will be taken by the Tamil Nadu Public Service Commission after final orders are passed in the matter. Hence, necessary reply to the Information Seeker will be sent to him, after a final decision in the matter is taken.”

9. Notwithstanding the stand taken by the TNPSC, the first respondent Commission had now stated in most of the impugned orders and they are as follows:

"At the enquiry the petitioner confirms the facts stated above and the Public Authority has stated that they are awaiting the decision to be taken in the dispute between the UPSC and the CIC and the decision of the Delhi High Court. As such they have not carried out the orders of the Commission, stating they have not received the Delhi High Court judgment. The issue here is the jurisdiction of various Commissions' and Courts'. Territorial and legal jurisdiction of CIC/UPSC and the Delhi High Court do not coincide with that of the TNIC and TNPSC. Since the Act does not provide for any over riding decision by the CIC on that of the SIC nor the judgment of the Delhi High Court would be binding on TNIC, the argument made by the Service Commission appears to be misplaced, since the RTI Act is very clear in what is exempted and what cannot be exempted. The purpose of the Act is total transparency in the Government except for the items specifically exempted. The TNIC is unable to appreciate the stand taken by the Tamil Nadu Public Service Commission. The TNIC has repeatedly stated in a number of judgements given earlier and has pointed out that while constitutional bodies have their independence which cannot be encroached upon, other statutory bodies also have roles which cannot be abdicated, and the role of each of the constitutional bodies has to be respected by other constitutional bodies with regard their particular role only. As such the TNIC would insist that the information must be given and non compliance will have to be taken as a defiance of the orders of the Commission and the Registrar is authorized to file an appropriate petition before the Hon'ble High Court as warranted."

10. The learned Senior Counsel emphasised that the matter is covered by the exemption provided under Section 8(1) of the Act and more particularly Sections 8(1)(d), 8(1)(e) and 8(1)(j), which is as follows:

"8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - .....

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e)information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; ....

(j)information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

11. Therefore, the information sought for by the contesting respondents, there was no larger public interest warranting such disclosure. In W.P.No.4113 of 2009, they are not bound to disclose the order as the information related to a third party and Section 8 squarely applies. Apart from the said submission, the learned Senior Counsel further submitted that such disclosure will lead to opening a Pandora's box, which will only scuttle all TNPSC's work. He also further submitted that they did not have enough manpower to deal with ever increasing applications seeking for information.

12. Per contra, Mr.G.Rajagopal, learned Standing Counsel for the Information Commission submitted that so long as TNPSC is a "public authority", information kept with them are available in public domain. The right of information is a part of the fundamental right protected by Article 19(1)(a) of the Constitution. Like any other authority, they are also accountable. The promotion of transparency and accountability is the object behind the RTI Act, which is set out in the preamble to the Act. Under Section 6(2), an applicant seeking for a request for information, shall not be required to give any reason for requesting information. He need not give any other personal details except those that may be necessary for contacting him. Therefore, the question of going into the bonafide of the contesting respondents may not arise. So long as the information sought for by them is not exempted under Sections 8, 9 or 24, a public authority is bound to provide information. If the information involved a third party and they are keeping the information that information can be disclosed, if public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

13.The learned counsel for some of the contesting respondents submitted that since the public information officer and the appellate authority nominated by the TNPSC had negated the queries made by them and that the Information Commission has now overruled their objections, the order under the RTI Act has become final and the TNPSC cannot be said to be the “aggrieved person” in challenging the order of the Information Commission. Therefore, the writ petitions at the instance of the TNPSC are not maintainable.

14.In the light of the rival contentions, the issues raised are set out and the findings thereon is given below:

14.1. Whether TNPSC can maintain such a writ petition?

Merely because a public authority under Section 5 designates an information Officer, it does not mean that their right to question the orders passed by the Commission directing the Information officer or the appellate authority designated by them under Section 19 to furnish information, their power gets denuded. In fact it is for convenient sake, the information officers are notified by each public authority. Ultimately, the information is provided only by the public authority through the mechanism of an information officer or the appellate authority, as the case may be. Even if their order are questioned or to be negated by the Information commission, certainly a public authority (in the present case TNPSC) is entitled to question the order of the information commission. Since the information commission is a statutory functionary, the decision of the Commission must be informed of reasons. Therefore, judicial review is permissible against the order of the information commission. If the order passed by the information commission is contrary to the RTI Act, the aggrieved public authority can question such information. Therefore, the objection in this regard by the contesting respondents has to be rejected.

14.2.Whether entertainment of such request for information will open Pandora's box and on that ground any restriction can be made on disclosure of such information?

With reference to the argument that it will open Pandora's box for many persons seeking such information, thereby making the work of the TNPSC go out of gear also cannot be accepted. Similar argument made in desperation was rejected by the Supreme Court vide its judgment in [N. Kannadasan v. Ajoy Khose](#) reported in (2009) 7 SCC 1. The Supreme Court in paragraph 127 of its judgment observed as follows:

"127. Mr Venugopal would submit that such an interpretation would open a floodgate. We do not think so. We even wish no occasion like the present one arises in future before the superior courts for their consideration. Even otherwise, the floodgate argument does not appeal to us. [In Coal India Ltd. v. Saroj Kumar Mishra](#)<sup>37</sup> this Court held: (SCC p.632, para 19) □ 19. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties. ([See Zee Telefilms Ltd. v. Union of India](#)<sup>38</sup> and [Guruvayoor Devaswom Managing Committee](#) v. C.K. Rajan<sup>39</sup>.) □ 14.3. Whether the argument that the TNPSC does not have wherewithal, i.e. enough staff to cope up with ever increasing query and they are already saddled with heavy work of conducting examinations for larger number of applicants in various Government services, can be accepted. Lack of human resources can never be pleaded as a ground to defeat the purpose of RTI Act. This court earlier in a judgment in Public Information Officer/ Deputy Commissioner of Archives and Historical Research, Tamil Nadu Archives Vs. State Chief Information Commissioner and others in W.P.No.20372 of 2009, dated 7.1.2010, in paragraph 13 observed as follows:

"13. The other objections that they are maintaining a large number of documents in respect of 45 departments and they are short of human resources cannot be raised to whittle down the citizens' right to seek information. It is for them to write to the Government to provide for additional staff depending upon the volume of requests that may be forthcoming pursuant to the RTI Act. It is purely an internal matter between the petitioner archives and the State Government. The right to information having been guaranteed by the law of Parliament, the administrative difficulties in providing information cannot be raised. Such pleas will defeat the very right of citizens to have access to information. Hence the objections raised by the petitioner cannot be countenanced by this court. The writ petition lacks in merit."

14.4: Whether the TNPSC can take cover under the provisions regarding exemptions provided under the RTI Act:

None of the exemptions found in Sections 9 and 24 are pleaded in this case. Arguments based upon Section 8(1)(d) has no relevance since the said sub section deals only with the information based upon commercial confidence, trade secrets or intellectual properties. In this case, no such question arises. Similarly the argument based upon exemption under Section 8(1)(e), i.e. the information is

available to the Commission was in fiduciary relationship and there are no larger public interest warranting disclosure of such information also cannot be accepted. Merely because in the manual prepared by the TNPSC, they have made such reservation claiming to be fall under Section 8, that will not deter the respondent Information Commission to direct them to disclose the information. The exemption claim should be in terms of RTI Act and not otherwise. The petitioner TNPSC is only conducting examinations for candidates, who are seeking public employment. Article 16 of the Constitution deals with the employment or appointment to any office under the State and also guarantees non discrimination in respect of employment or office under the State and also provides for reservation for certain class of employment as well as reservation in promotions. These are all vital information which a citizen is entitled to get, since after selection if a person gets appointed to public office, the authority under which he holds office can also be questioned in an appropriate legal forum.

15.It must be noted that Article 16 is a spread of Article 14. Therefore, non arbitrariness is held to be a part of Article 16 by the Supreme Court vide its decision in [Delhi Transport Corpn. v. D.T.C. Mazdoor Congress](#) reported in 1991 Supp (1) SCC 600.

16.As to what is meant by the term "Fiduciary relationship", a Full Bench of the Delhi High Court headed by A.P.Shah, C.J. had an occasion to deal with the same in a decision in Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal reported in 2010 (1) CTC 241. The meaning of the term "Fiduciary relationship" drawn from various authorities are dealt with in paragraphs 97,98 and 99 of the said judgment. The Full Bench of the Delhi High Court quoted these passages with the approval and the same read are as follows:

#### "Fiduciary Relationship

97.As Waker defines it: "A 'fiduciary' is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians, solicitors and clients and other similarly placed." [Oxford : Companion to Law, 1980 p.469]

98."A fiduciary relationship" as observed by Anantnarayanan, J., "may arise in the context of a jural relationship. Where confidence is reposed by one in

another and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence." [[See Mrs.NeHie Wapshare v. Pierce Lasha & Co. Ltd.](#), AIR 1960 Mad 410]

99.In *Lyell v. Kennedy*, 1889 (14) AC 437, the Court explained that whenever two persons stand in such a situation that confidence is necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that confidence. Such a confidential situation may arise from a contract or by some gratuitous undertaking, or it may be upon previous request or undertaken without any authority.”

17.In the present case, information are sought by the applicant to various posts. Five out of six cases, the examinees themselves are seeking information, key answers for the examination undertaken by them in the test appeared by them. Therefore, these information cannot be said to be kept in fiduciary relationship by the TNPSC. On the other hand, the TNPSC being an examining body had prepared the key answers for the purpose of valuing the answers given by the candidates and that answers are relevant for them to find out whether they have been given due marks for the answers given by them in their answer sheets.

18.The Supreme Court vide its judgment in [Secretary, W.B. Council of Higher Secondary Education v. Ayan Das](#) reported in (2007) 8 SCC 242 in paragraph 10 observed as follows:

“10. The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board. Then only can the court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee. [In Kanpur University v. Samir Gupta](#) it was held as follows: (SCC p.316, paras 16-17) □16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be

clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.□

19. Though the learned Judge of this court in *B. Bindhu Vs. Secretary, Tamilnadu Circle Postal Co-operative Bank Ltd.*, reported in 2006 4 MLJ 252 held that a person cannot seek information regarding her application submitted, the said view cannot be said to be given correct legal position. Subsequently, a division bench of this court in *N. Rajachandrasekaran Vs. Secretary to Government, Public (Special-A) Department, State of Tamil Nadu and others* reported in 2009 (5) CTC 828 held that information regarding appointment and related particulars can be obtained if it is not exempted by Section 8. After setting out the query made by one of the petitioners in paragraph 2 of the said order, in paragraphs 8 and 9, the division bench held as follows:

"8. We may notice that "The Right to Information Act, 2005" was promulgated on 15th Feb., 2005 and published in the Gazette on 21st June, 2005 for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. As democracy requires an informed citizenry and transparency of information, which are vital to its functioning and also to contain corruption to hold the Governments and their instrumentalities accountable to the governed; and revelation of information in actual practice is likely to conflict with other public interests,



including efficient operations of the Governments, with a view to harmonise these conflicting interests, while preserving the paramountcy of the democratic ideal, the Parliament thought it expedient to provide for furnishing certain information to citizens, who desires to have it.

9. While request for obtaining information and disposal of request has been mentioned u/s 6 and 7 of the Right to Information Act, 2005, exemption from disclosure of information is prescribed u/s 8, which reads as follows :-

“Extract of Section 8 omitted.”

Admittedly, the present case in hand do not fall within the purview of any of the exemption clause from disclosure of information.”(Emphasis added)

20. Even earlier, another division bench in V. Neethi Durai and others Vs. Chairman, TNPSC and others in W.P.No.28236 of 2008 and batch cases, dated 16.12.2008, more or less dealt with a similar question and in paragraphs 5 to 7, it was observed as follows:

“5. We do not accept such a submission, as it is evident that it is the TNPSC which reserved itself a right to get any answer book revalued, if in its opinion there was any sufficient/valid grounds to do so. If any candidate has any doubt that the answer book has not been properly evaluated and if there is a large variation in the marks of the candidate which he expected with the marks that what was actually awarded, such candidate at best can represent before the TNPSC and if sufficient and valid grounds are shown, it is always open for the TNPSC to get any answer book revalued.

6. For example, if it is found that the candidates of a particular Examination Centre have been awarded such lesser marks that most of them failed, on the contrary, in another Examination Centre, almost all the candidates have been awarded with exceptionally higher marks, then, with respect to the very same subject, one may raise some doubt and if sufficient and valid grounds are made out, the TNPSC may enquire into the same and make revaluation of the answer books in general.

7. So far as the individual candidate is concerned, if strong and sufficient/valid grounds are not made out, on mere submission of a candidate that he performed well or he expected more marks, the question of revaluation does not arise.”

21.The learned counsel for TNPSC however placed reliance upon a division bench judgment of this court in P.Tamilarasi Vs. TNPSC made in W.A.No.1453 of 2009, dated 14.10.2009. But, it is not clear as to how the said judgment can have any bearing on the present case. In that case, the request was not made to TNPSC, but a writ petition was filed before this court seeking for key answers for the examinations held during June, 2007. That writ petition itself came to be filed only in 2009. A learned Judge of this court rejected the application for interim order, as against which a writ appeal was filed. The division bench withdrew to itself the main writ petition itself. While dismissing the W.P., in paragraph 7 observed as follows: "7.In any case, inasmuch as the selection process in respect of the aforesaid notification having already been completed, it will be difficult to upset the selected candidates at this stage. Learned senior counsel, therefore, requests that if that is the view of the Court, the writ petition itself be decided. We, therefore, withdraw the writ petition to this Division Bench and in view of what is stated above, inasmuch as there is substantially long delay in approaching the Court, we dismiss the writ petition on that ground alone."

22.The learned Senior Counsel for the TNPSC however placed reliance upon the instruction given to the candidates by the TNPSC at the time of writing examinations. He stated that in instruction No.11, it was clearly stipulated that request from candidates for furnishing the cause for their failure in the test or for revaluation of their answer sheets will not be complied with. Further in the general instruction, though in paragraph V(vii), the Public Service Commission reserved itself to get any answer book reviewed, if it is in its opinion there is sufficient/valid ground to do so, that does not give a cause of action for the candidates to seek for either answer books or seek for revaluation. It must be noted that in the present case, it is not the question of any revaluation, but it is a question of getting required information by the candidates or by a third party. Therefore, the instruction given by the TNPSC has no bearing on the question of deciding the controversy on hand.

23.After furnishing such information as to what the candidate will do is entirely a matter which the candidate has to decide. Merely because they have no right to seek revaluation that is not a ground to deny information sought for by the candidate. It will be entirely another matter if any challenge is made based upon the information received by the candidate. In such circumstances, it is for the Court to grant judicial review within the limited parameters available. Therefore, the argument in this regard raised by the TNPSC has to be necessarily rejected. The impugned orders of the Tamil Nadu Information Commission directing the

TNPSC to provide information sought for by the applicants cannot be found fault with.

24.The last contention that the information sought for in respect of one Tmt. Shanthi in W.P.No.4113 of 2009 by the contesting respondent Kozandavelu cannot be denied only on the ground that there was any third party interest involved. When TNPSC took defence in terms of exemption under Section 8(1)(j) and the Information Commission had asked the TNPSC whether if such information will be provided to the State legislature if it sought for it, the TNPSC answered the same in the affirmative. Therefore, the Information Commission directed in public interest to provide such information. This was on the premise that what was made available to a legislature should also be available to a private respondent, as can be seen from the proviso to Section 8(1)(j). It is clearly stated that the information which cannot be denied to the Parliament or the State legislature, shall not be denied to any person.

25.In the light of the above, all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

30.03.2010

Index : Yes

Internet : Yes

vvk

To

The Registrar,

The Tamil Nadu Information Commission,

Kamadhenu Super Market,

First Floor,

Old No.278, New No.373, Anna Salai,

Teynampet,

Chennai-600 018.

K.CHANDRU, J.

vvk

PRE DELIVERY ORDER IN

W.P.NOs.34630 of 2007, 6518 and 10327 of 2008, 4113, 18049 and 21109 of 2009

30.03.2010